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Aramark Corporation and International Union of Operating Engineers, Local 456, AFL-CIO.
Case 11-CA-17497

July 25, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge and an amended charge filed on May 6 and 19, 1997, the General Counsel of the National Labor Relations Board issued a Complaint and Notice of Hearing on June 4, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 11-RC-6190. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On June 30, 1997, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On July 1, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 14, 1997, the Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain, but attacks the validity of the certification on the grounds that the Board erroneously asserted jurisdiction over the Respondent in the representation proceeding. The Respondent urges the Board to reexamine the new legal standard for asserting jurisdiction the Board announced in *Management Training Corp.*, 317 NLRB 1355 (1995), as well as its determination in the representation proceeding that the Respondent is within the Board's jurisdiction under that standard.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation pro-

ceeding.¹ We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is now, and has been at all times material herein, a Delaware corporation with a jobsite located at The Citadel, the Military College of South Carolina, in Charleston, South Carolina, where it is engaged in the business of providing food service.

During the 12-month period preceding the issuance of the complaint, which period is representative of all times material herein, the Respondent purchased and received at its Charleston, South Carolina jobsite goods and materials valued in excess of \$50,000 directly from points outside the State of South Carolina and derived gross revenues in excess of \$500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held April 16, 1997, the Union was certified on April 24, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All food service workers employed by Aramark Corporation at The Citadel, including all salad makers, bakers, cooks, utility employees, waitresses, head waitresses, and p.m. chef; excluding all office clerical employees, professional employees, the food service director, assistant food service director, production managers, dining room managers, catering supervisor, a.m. chef, snack bar manager, assistant snack bar manager, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

¹ We note that the validity of the Board's decision in *Management Training* has recently been upheld by the Fourth and Sixth Circuits. See *Pikeville United Methodist Hospital of Kentucky v. Steelworkers*, 109 F.3d 1146 (6th Cir. 1997); and *Teledyne Economic Development Corp. v. NLRB*, 108 F.3d 56 (4th Cir. 1997).

² Member Higgins notes that he has previously voted in other cases to reconsider the Board's continued adherence to *Management Training*. However, he agrees with his colleagues that the Respondent has raised no new issues in this "technical" 8(a)(5) proceeding warranting a hearing.

B. *Refusal to Bargain*

Since about April 29, 1997, the Union has requested the Respondent to bargain, and, since about May 2, 1997, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after May 2, 1997, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Aramark Corporation, Charleston, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union of Operating Engineers, Local 465, AFL-CIO, as the exclusive bargaining representative of the employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All food service workers employed by Aramark Corporation at The Citadel, including all salad makers, bakers, cooks, utility employees, waitresses, head waitresses, and p.m. chef; excluding all office clerical employees, professional employees, the food service director, assistant food service director, production managers, dining room managers, catering supervisor, a.m. chef, snack bar manager, assistant snack bar manager, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Charleston, South Carolina, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 11 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 6, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 25, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union of Operating Engineers, Local 465, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All food service workers employed by us at The Citadel, including all salad makers, bakers, cooks, utility employees, waitresses, head waitresses, and p.m. chef; excluding all office clerical employees, professional employees, the food service director, assistant food service director, production managers, dining room managers, catering supervisor, a.m. chef, snack bar manager, assistant snack bar manager, guards, and supervisors as defined in the Act.

ARAMARK CORPORATION